

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7032

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Docket No. 75-7032

BEACON CONSTRUCTION COMPANY, INC.,

Plaintiff-Appellee

v.

MATCO ELECTRIC COMPANY, INC.,
d/b/a DWYER ELECTRIC CO., INC.,

Defendant-Appellant

APPEAL FROM A JUDGMENT ENTERED IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

APPENDIX



BECKER, CARD, LEVY & RICHARDS, P. C.
ATTORNEYS AT LAW
141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760

TELEPHONE (607) 754-0106

Attorneys for Defendant-Appellant

PAGINATION AS IN ORIGINAL COPY

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COMPLAINT

1. The plaintiff is a corporation organized under the laws of the state of Massachusetts with its principal place of business in Massachusetts and the defendant is a corporation organized under the laws of the state of New York with its principal place of business in New York. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

2. Under date of September 20, 1972, the plaintiff entered into a written contract with the defendant, a copy of which is appended hereto as Exhibit A whereby the defendant undertook to provide the complete interior electrical and exterior electrical systems required in the construction of Paul Place Housing for the Elderly Residential Project - Elderly Site 6 - Pinnacle View Apartments.

3. Paragraph 14 of the terms and conditions of said contract provides, in part:

".... The Subcontractor hereby agrees that no mechanic's or other lien, notice of contract or other claims or charges shall be filed or maintained by it against the said buildings and improvements and real estate appurtenant thereto, or any part thereof, for or on account of any work or labor done or materials furnished under this Subcontract or otherwise, for, toward,

in or about the erection and constructions of said buildings and improvements and that the filing of any lien, notice of contract or other claim or charge shall be grounds for termination of this Subcontract under the provisions of Paragraph 9 above. The Subcontractor hereby formally and irrevocably releases and waives any and every mechanic's, materialman's and any and every other lien, charge and claim of any nature whatsoever that it has or may at any time be entitled to have against the aforementioned buildings, improvements and real estate, together with its right to file any and every such lien, claim and charge"

4. Under date of August 28, 1974, the defendant served upon the Controller of the New York State Urban Development Corporation and upon the plaintiff, a "notice of lien on account of public improvement." A copy of the notice served upon the defendant is appended hereto as Exhibit B.

5. Under date of August 29, 1974, the defendant gave notice to the plaintiff of the filing of a notice of mechanic's lien in the Monroe County Clerk's office, a copy of which is appended hereto as Exhibit C.

6. Under date of August 30, 1974, the defendant mailed to the plaintiff a demand for a verified statement pursuant to Section 76 of the New York Lien Law, a copy of which is appended hereto as Exhibit D.


7. Plaintiff contends that the defendant is not entitled to maintain a lien or otherwise claim the benefits of the Lien Law by virtue of the written waiver of lien contained in the subcontract.

8. Plaintiff further contends that, inasmuch as defendant is not entitled to lien rights, it is not entitled to demand a verified statement under Section 76.

Wherefore, plaintiff demands judgment

(1) declaring that the notice under mechanic's lien law filed by the defendant with the clerk of Monroe County against the real property of Clinton Avenue Paul Place Houses, Inc., is null and void and of no force or effect,

(2) vacating the defendant's request for a verified statement pursuant to paragraph 5 of section 76 of the New York Lien Law.


ROCHE CARGOS & DEGIACOMO
One Center Plaza
Boston, Mass. 02108
Tel. (617) 742-6141

AMENDED COMPLAINT

Plaintiff amends its complaint heretofore filed and served as follows:

(a) By striking out paragraph 8 and substituting therefor the following:

"8. On October 3, 1974, the plaintiff filed in the County of Monroe County Clerk's office a bond in the penal sum of \$551,601.82, for the purpose of dissolving the lien of the defendant.

"9. The cost to the plaintiff of obtaining said bond was \$ 3,516.00 in premiums paid to the Aetna Casualty and Surety Company, minus of \$10.00."

(b) By striking out paragraph (2) of the demand for judgment and substituting the following:

"(2) The plaintiff demands judgment for the sum of \$3,516.00."

(3) The defendant shall pay the cost of the aforesaid bond premium in the sum of \$ 3,516.00 and its costs herein.

[Signature]
Joseph J. Meyer
Joseph Meyer & Pappalardo
One Center Plaza
Buffalo, NY 14202
Tel. (716) 742-6201

[Signature]
Howard M. Meyer
McGrath Meyer Lieberman & Lipo
1400 Statler Hilton Building
Buffalo, New York 14262
Tel. (716) 856-6000

MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

Plaintiff moves, pursuant to Rule 56, FRCP, upon the facts established by the pleadings and by the annexed affidavits of Harvey Steinberg and Michael T. Putziger, that summary judgment be entered in its favor as follows: (1) declaring that the notice of mechanics lien dated August 28, 1974, filed by the defendant in the Monroe County Clerk's Office against the property of Clinton Avenue Real Estate Trust, Inc., situated at 646 Clinton Avenue, South, in the City of Rochester was invalid, (2) declaring that the deed given on October 3, 1974, by the plaintiff to the defendant and the interest therein and the same to be void and of no effect and that the plaintiff be reimbursed for the costs of the litigation.

Robert J. Porter
Rocha, Gerson & Bagshaw
One Center Plaza
Rochester, New York 14609

Michael T. Putziger
Michael T. Putziger
Rocha, Gerson & Bagshaw
1400 Shaffer Hilton Building
Buffalo, New York 14202
Tel. (716) 856-6900

Affidavit

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

I, JAMES J. O'NEILL, being duly sworn, depose and say that

I am a vice president of the
Rochester Telephone Company, Inc. and that in the course

of the plaintiff's action for surrogacy under

of the plaintiff's action as vice president
of the plaintiff's corporation, I was and am corporate
executive in charge of the construction of Paul Place
Building for the Ellettsville, N.Y. Telephone View Apartments
in the city of Rochester, New York.

5. As such I negotiated and, on or about September 20, 1972, signed on behalf of the plaintiff, a subcontract with the defendant Natco Electric Company, Inc. A copy of the subcontract is annexed hereto as Exhibit A.

formally and irrevocably releases and waives any and every mechanic's, material-men's and any and every other lien, charge and claim of any nature whatsoever that it has or may at any time be entitled to have against the aforementioned buildings, improvements and real estate, together with its right to file any and every such lien, claim and charge"

7. On or about August 29, 1974, the defendant caused to be filed in the Orange County Superior Court a Complaint for Specific Performance of a contract to sell real property, a copy of which is attached hereto as Exhibit A.

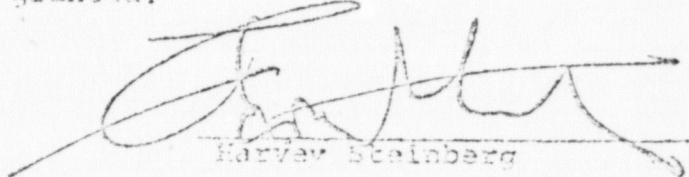
the defendant on the interest of the owner. Such

of funds by the construction lender, and leaves plaintiff as plaintiff to remedy against the specific enforcement of the agreement by the relief demanded in this action.


DN 215 31 215 10

215 10 215 10

WHEREFORE, it is respectfully submitted
that the plaintiff's motion for summary judgment
herein should be granted.


Harvey Steinberg

Subscribed and sworn to before me at Boston,
Massachusetts this 27th day of September 1974.


Notary Public, Commonwealth
of Massachusetts

Notary Public, Commonwealth
of Massachusetts

RECEIVED 10-1-74

10-1-74

Affidavit

MICHAEL T. PUTZNER, being duly sworn,
deposes and says as follows:

I am a member of the bar of Massachusetts
and of the State of New York, Japan, and Mexico, counsel to
the United States, and an

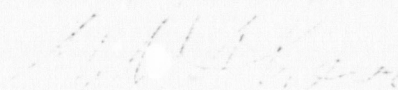
attorney-at-law for various purposes.

3. On October 2, 1911, on behalf of the
United States, I was authorized to execute
a writ of habeas corpus by the plaintiff as principal and the
United States as surety. A copy of
this writ is annexed hereto and made part of this
affidavit.

4. On the same day, I executed a stipulation for an order discharging the real property described in the defendant's Notice of Mechanic's Lien from the lien and appeared before the Honorable Austin W. Erwin, a justice of the Supreme Court of New York, who entered an order in accordance with the stipulation. A copy of the order and of the stipulation is annexed hereto.

5. Also annexed hereto are copies of the bills for the premium for said bond rendered by the Aetna Casualty and Surety Company to Collier, Cobb and Associates, 1101 Broadway, New York, New York, and of the bill for the premium for said bond rendered by the Aetna Casualty and Surety Company to Collier, Cobb and Associates, 1101 Broadway, New York, New York.

Subscribed and sworn to before me at Boston,
Massachusetts, this 10th day of October 1974.


Notary Public
Commonwealth of Massachusetts
Commission expires
September 25, 1979.

STATE OF NEW YORK
SUPREME COURT; COUNTY OF MONROE

IN THE MATTER OF THE NOTICE UNDER MECHANIC LIEN LAW

of

ORDER

MATCO ELECTRIC COMPANY INC.
d/b/a DWYER ELECTRIC COMPANY INC.

against

BEACON CONSTRUCTION COMPANY INC.

By reason of the stipulation by and between the
attorney's for the parties, a copy of which is annexed hereto, it is ,

ORDERED, that a certain Notice Under Mechanic's
Lien Law, filed by Beacon Construction Company Inc., relating to
certain property situated at 600 Clinton Avenue South, Rochester, New
York, in the County of Monroe, be and the same is hereby
discharged.

S/ Austin W. Brown

STATE OF NEW YORK
SUPREME COURT : COUNTY OF MONROE

In the matter of the Notice Under Mechanic Lien Law

of

STIPULATION

MATCO ELECTRIC COMPANY INC.
d/b/a DWYER ELECTRIC COMPANY INC.

against

BEACON CONSTRUCTION COMPANY INC.

WHEREAS, MATCO ELECTRIC COMPANY INC. filed in the office of the Clerk of the County of Monroe, a Notice of Mechanic's Lien under the Lien Law of the State of New York relating to improvement on real property situate at 846 Clinton Avenue South, City of Rochester, County of Monroe and State of New York, on the 29th day of August, 1974.

NOW TO BE DONE, it is stipulated by and between the undersigned for the purposes of the Lien Law of the State of New York that the amount of \$1,501.92, issued by the Aetna Casualty and Surety

MATCO ELECTRIC COMPANY INC. d/b/a
DWYER ELECTRIC COMPANY INC.

Decker, Gann, Levy & Richards, P.C.

By: Rodney A. Richards

Rodney A. Richards
a member of the firm

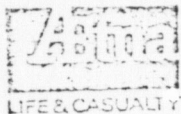
Attorney for:
BEACON CONSTRUCTION COMPANY INC.

Roche, Carpins & DeGiacomo

By: Michael T. Putziger

Michael T. Putziger
a member of the firm

Dated this 3rd day
of October, 1974



BOND TO DISCHARGE
MECHANIC'S LIEN

THE AETNA CASUALTY AND SURETY COMPANY
Hartford, Connecticut 06115

KNOW ALL MEN BY THESE PRESENTS, That we, BEACON CONSTRUCTION CO., INC., P.O. Box 2051,
Montello Station, Brockton, Mass. 02405

as Principal, and THE AETNA CASUALTY AND SURETY COMPANY, of Hartford, Connecticut, with an office and usual
place of business at No. 1200 Sibley Tower Bldg., Rochester, New York

as Surety, are held and firmly bound unto the Clerk of the County of Monroe in the sum of
Three Hundred Fifty-one Thousand Six Hundred One & 82/100 (\$ 351,601.82) Dollars, lawful
money of the United States, for which payment well and truly to be made we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED and SEALED this 30th day of September, 1974.

WHEREAS, on the 28th day of August, 1974, MATCO ELECTRIC COMPANY, INC. d/b/a

DAVEN ELECTRIC CO., INC., 56 Commerce Drive, Rochester, New York

caused to be filed in the office of the Clerk of the County of Monroe a notice of Mechanic's Lien
or Claim in the sum of Two Hundred Ninety-three Thousand One & 52/100 (\$ 293,001.52) Dollars, against
Real Property situate at 31,6 Clinton Avenue, South, Rochester, New York

the enforcement of said lien, not exceeding the sum of Three Hundred Fifty-one Thousand Six Hundred One & 82/100
(\$ 351,601.82) Dollars, from this obligation to be void, unless the said lien is paid or satisfied.

THE AETNA CASUALTY AND SURETY COMPANY

By W. A. Nicholas
W. A. Nicholas, Attorney-in-Fact

State of Massachusetts
County of Suffolk }

On this 30th day of September, 1974, before me personally appeared Harvey Steinberg

County of

ss.

On this day of , 19 , before me personally came

to me known, who, being by me duly sworn, did depose and say: That he resides in the City of ; that he is Attorney-in-Fact of THE AETNA CASUALTY AND SURETY COMPANY, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by him and that he signed said instrument as Attorney-in-Fact by authority of the Board of Directors of said Company; and aifiant did further depose and say that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882 of the Laws of the State of New York for the year 1939, constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law as amended, issued to THE AETNA CASUALTY AND SURETY COMPANY his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guaranties, and other obligations required or permitted by law; and that such certificate has not been revoked.

Notary Public

The within instrument has been executed by the above named officer by authority of the Board of Directors pursuant to the following Standing Resolutions of the aforesaid THE AETNA CASUALTY AND SURETY COMPANY, which Resolutions are now in full force and effect:

VOTED: That each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, may from time to time appoint Resident Vice Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding on the Company when it is signed by the Chairman, the Vice Chairman, the President, an Executive Vice President, a Senior Vice President, a Vice President, an Assistant Vice President or by a Resident Vice President, subject to the power prescribed in the certificate of authority of such Resident Vice President, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary.

State of New York

County of

ss.

AND that the said THE AETNA CASUALTY AND SURETY COMPANY, at the City of this day of , 19

BOND TO DISCHARGE
MECHANIC'S LIEN

approve of the within bond as to its form and
efficiency of the Surety.

ATTORNEY-IN-FACT JUSTIFICATION

PRINCIPAL'S ACKNOWLEDGMENT - IF A CORPORATION

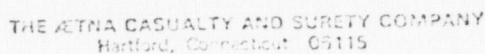
State of New York, County of

PRINCIPAL'S ACKNOWLEDGMENT - IF INDIVIDUAL OR FIRM

State of New York, County of

State of New York, County of Madison

Surplus, carried at \$ 33,229,655



KNOW ALL MEN BY THESE PRESENTS, THAT THE AETNA CASUALTY AND SURETY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and duly by these presents make, constitute and appoint R. B. Longfote, W. A. Michener, D. J. Robinson, M. E. Boorman
or R. E. Pool - -

of Rochester, New York, its true and lawful Attorneys-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States or if the following line be filled in, within the area there designated, the following instrument(s):

by his sole signature and act, any and all bonds, recognitions, contracts of indemnity, and other writings obligatory in the nature of a bond, recognition, or conditional undertaking, and any and all covenants incident thereto.

Unrecovered Assistant Secretary

- 51 -

Thos. MacFadden, Assistant Secretary

20-27-76

030-01376

Deacon Constr. Co., Inc.
Pittsboro
c/o Center Plaza
Rochester, Mass. 02168

1 2 3 4 5 6 7 8 9 10 11 12	ORDERED	RECEIVED	RENEWAL NOTICE SENT <input type="checkbox"/>
	RENEW		
	TERMS		
	<input type="checkbox"/> DELIVER <input type="checkbox"/> AIRMAIL	<input type="checkbox"/> ADULT <input type="checkbox"/> YOUTH/ADOLESC	<input type="checkbox"/> SPECIAL LISTEN <input type="checkbox"/> OTHER

ORDER AND JUDGMENT

Robert J. Sherer
1 Center Plaza
Boston, Mass. 02108

and

Howard J. Meyer
1000 Chrysler Building
Buffalo, N.Y. 14203

Beacon, a Massachusetts corporation, was the
owner and contractor of the Beacon Hill
an elderly residential project in Rochester, New York.
Macco, a New York corporation, entered into a subcontract
with Beacon to install the electrical work. The subcontract
contained a written waiver of Macco's right to file a
notice of mechanics lien under the New York Lien Law.

The complaint herein, based upon alleged diversity of citizenship, was filed September 11, 1974. The action was brought pursuant to 28 U.S.C. Section 1332 in which the plaintiff sought a judgment under 28 U.S.C. Section 2201, declaring null and void a notice of lien as in violation of the contract between the parties, seeking specific performance of an agreement waiving the defendant's right to file a notice of lien, and other relief.

On October 23, 1974 the defendant filed a notice of motion returnable on November 11, 1974 to dismiss the complaint on the alternative for no other reason, and plaintiff to pay security for costs.

"3. On October 3, 1974 the plaintiff filed in the United States District Court for the District of Columbia a petition for writ of habeas corpus, for the purpose of dissolving the lien on the defendant.

"9. The cost to the plaintiff of obtaining said bond was \$3,516.00 in premiums paid to the Aetna Casualty and Surety Company, surety on said bond."

It further struck out paragraph 2 of the demand and inserted the following:

"(2) Declaring that the bond filed by the plaintiff as principal and the Aetna Casualty and Surety Company as surety on October 3, 1974, is void.

"(3) Awarding plaintiff the cost of the aforesaid bond premium in the sum of \$3,516.00 and its costs herein."

On the same day, October 29, 1974, plaintiff filed with supporting papers a motion for summary judgment: (1) Declaring that the notice of mechanics lien dated August 28, 1974 filed by the defendant in the Monroe County Clerk's Office against the property of Clinton Avenue Paul Blatz House, Inc., 146 Clinton Avenue South, Rochester, New York, was invalid. (2) Declaring that the bond given by the defendant to the plaintiff in the sum of \$3,516.00 was void. (3) Awarding plaintiff the sum of \$3,516.00 paid by the plaintiff as a premium for the bond.

The amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. This court has jurisdiction to determine the controversy.


The owner of the property is not a necessary or indispensable party.

The complaint and amended complaint state a claim for which this court is empowered to grant relief.

There is no genuine issue as to any material fact. The plaintiff is entitled to judgment as a matter of law. Accordingly, it is hereby

ORDERED and ADJUDGED that the defendant breached its contract with the plaintiff, when, on August 29, 1974 it caused to be filed a notice of lien in the Monroe County Clerk's Office. The notice of lien is null and void. The filing by the defendant of the notice of lien made it necessary for plaintiff to incur expense of \$3,516.00 as a premium for a bond to discharge the lien. The bond given by the plaintiff on October 4, 1974, as principal and the Aetna Casualty and Surety Company as surety, to dissolve the lien.

Further judgment is hereby stayed until and including January 2, 1975 to afford the defendant an opportunity to file a notice of appeal.


HAROLD P. BURKE
United States District Judge

December 12, 1974.

JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Harold P. Burke
United States District Judge, presiding, and the issues having been duly tried
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff, Beacon Construction Company,
Inc., shall recover against defendant, Matco Electric Company, Inc.
d/b/a Dwyer Electric Co., \$3,516.00, the premium incurred for the bond.
Execution of this judgment is hereby stayed until and including
January 2, 1975, to afford the defendant an opportunity to file a
notice of appeal.

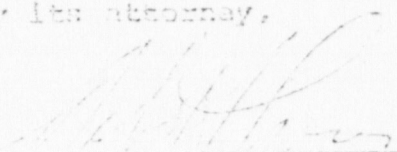
of December 1974

JOHN K. ADAMS
Clerk of Court

MOTION BY PLAINTIFF TO CORRECT JUDGMENT


Plaintiff moves, pursuant to Rule 60(a) F.R.C.P. that the form of the judgment entered in this action by the clerk on December 16, 1974, be corrected to the form appended hereto so as to conform to the order of the Court entered on December 12, 1974.

By its attorney,


Robert J. Maier
Rocha Caruso & DeSicomo
One Center Plaza
Boston, MA 02108
Tel. (617) 742-6161

Plaintiff hereby certifies that it shall bring the corrected form of the judgment before the court as soon as it is received, and that it shall file the corrected form of the judgment with the court on or before December 16, 1974.

In witness whereof,


Robert J. Maier
Rocha Caruso & DeSicomo
One Center Plaza
Boston, MA 02108
Tel. (617) 742-6161
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

BEACON CONSTRUCTION COMPANY INC., }

v. }

SAVOO ELECTRIC COMPANY, INC.,
d/b/a SAVER ELECTRIC CO., INC. }

CIVIL ACTION
NO. 74-426

VERIFICATION

This action came on for hearing before the
Court, Honorable Harold B. Burke, District Judge,
Western District of New York, and the issues having been
presented and the facts having been fully established.

It is respectfully requested:

That the contract, Inc. is null and void.

2. That the contract

be dissolved and the entire contract and security be
cancelled and the contract be null and void.

3. That the plaintiff Beacon Construction
Company Inc. shall recover against the defendant

Natco Electric Company, Inc. d/b/a Dwyer Electric Co.,
Inc. \$3516.00, the premium incurred for the bond.

Dated at Buffalo, New York, this 16th day of
December 1974.

Clerk of Court

STIPULATION AND ORDER TO CORRECT JUDGMENT

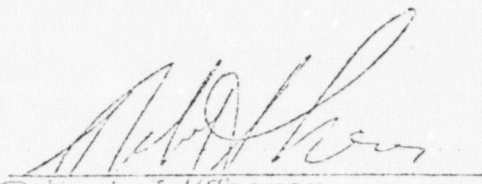
The parties to the above-captioned action, by their attorneys, stipulate as follows:

1. The Plaintiff's motion under Rule 60(a) of the Federal Rules of Civil Procedure, to correct the form of judgment entered by the clerk on December 16, 1974, so as to conform

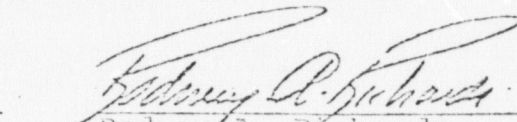
said motion shall be entered quid pro tunc as of

3. Such corrected judgment shall be treated as the judgment from which the defendant's appeal was taken on December 30, 1974.

4. This stipulation, the plaintiff's motion to correct judgment, and the corrected judgment, shall be transmitted by the Clerk of this Court to the Court of Appeals as a supplemental record on appeal.




Robert J. Sherer
Roche Carens & DeGiacomo
One Center Plaza
Boston, MA 02108
Tel. (617) 742-6161
Attorney for Plaintiff



Rodney A. Richards
Becker Card Levy & Richards
141 Washington Avenue
Endicott N.Y. 13760
Tel. (607) 754-0106
Attorney for Defendant

The foregoing stipulation
is approved and it is
so ordered:



CORRECTED JUDGMENT

This action came on for ~~work~~ (hearing) before the Court, Honorable HAROLD P. BURKE, United States District Judge, presiding, and the issues having been duly ~~trick~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged

1. That the notice of lien filed by the defendant on August 29, 1974, in the Monroe County Clerk's office against the property of Clinton Avenue Paul Place Houses, Inc. is null and void.

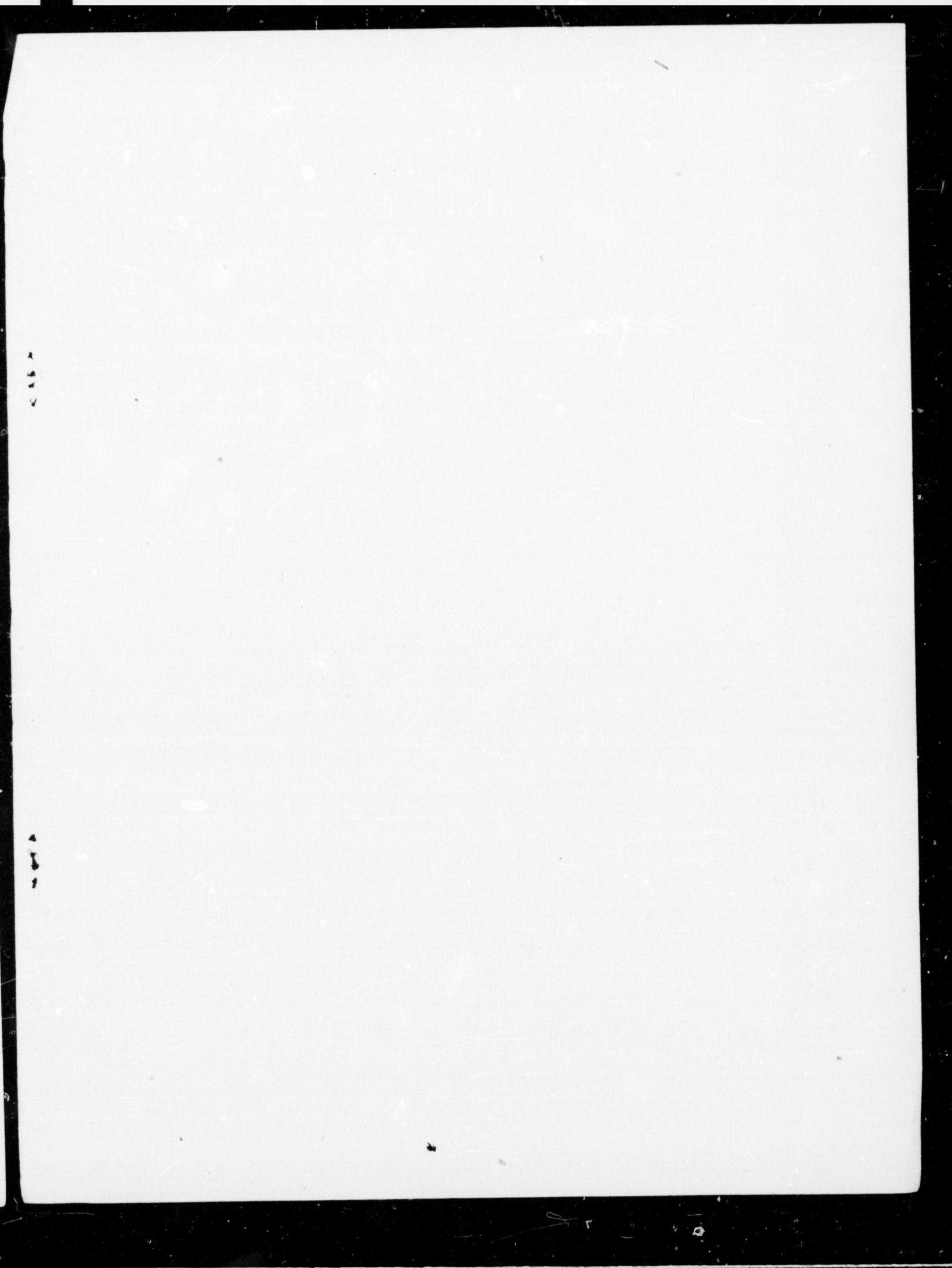
2. That the bond given by the plaintiff as principal and the Aetna Casualty and Surety Company as surety to dissolve the said lien is void.

3. That the plaintiff Beacon Construction Company, Inc. shall recover against the defendant Matco Electric Company, Inc. A/B/a Super Electric Co., Inc., \$8,318.00, the premium incurred for the bond.

Done at Buffalo, New York
of December , 1974.

this 16th day

JOHN F. ADAMS
Clerk of Court



№. 8148-010

WHEREAS, the Contractor has undertaken the construction of the Paul Place Housing for the Elderly Residential Project — Elderly Site 6 — Pinnacle View Apartments, hereinafter called the "Project", in Rochester, New York, in accordance with the provisions of a construction contract between the Contractor and Clinton Ave. Paul Place Houses, Inc., hereinafter called the "Owner", a corporation organized and existing under the Private Housing Finance Law of the State of New York and a subsidiary of the New York State Urban Development Corporation, hereinafter called "UDCOR";

ENCLOSURE A ENCLOSURE B
ENCLOSURE C ENCLOSURE D
ENCLOSURE E ENCLOSURE F

with the General Contract and the contract documents referred to therein, including the drawings, plans, and specifications which are contract documents under the provisions of the aforementioned Construction Contract, UDC Project No. 99, and Addendum #1 (8/9/72) and Addendum #2 (8/28/72) on file at UDC,

Matco Electric Company Inc.
Dwyer Co. Inc.

BEACON CONSTRUCTION COMPANY INC.

LOUISE M. MOROWITZ

R I D E R

ANNEXED TO AND MADE PART OF SUBCONTRACT DATED September 20,

19 72, BETWEEN Matco Electric Company Inc. - d/b/a Dwyer
Electric Co. Inc. and Beacon Construction Company Inc.

WITH REFERENCE TO CERTAIN WORK IN CONNECTION WITH THE CON-
STRUCTION OF PINNACLE VIEW APARTMENTS, ROCHESTER, NEW YORK.

It is understood and agreed that the Subcontract price provided for in

Section 3 of the aforementioned Subcontract is the total of (1) THREE HUNDRED AND FIFTY-

THOUSAND DOLLARS (\$ 352,000.00) in payment for the materials to

be furnished and installed, and (2) ONE HUNDRED AND FIFTY-

THOUSAND DOLLARS (\$ 150,000.00) in payment for the work and

to be performed and completed under the Subcontract and for the Sub-

RHK

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

THE FOLLOWING WORK IS ALSO INCLUDED:

1. Specification Sections as follows:
 - a. SPECIAL CONDITIONS MECHANICAL & ELECTRICAL TRADES DIVISIONS 15 AND 16, complete.
 - b. DIVISION 16 ELECTRICAL, complete.
2. Furnishing Performance and Payment Bonds.
3. Perform own engineering and layout work.
4. Provide temporary electric service as directed by the General Contractor.
5. The Subcontractor shall be responsible for the layout, grading and construction of the electrical system, including the installation of all electrical equipment, wiring, conduits, raceways, and other items as shown on the plans and specifications.
6. The Subcontractor shall be responsible for the installation of all electrical equipment, wiring, conduits, raceways, and other items as shown on the plans and specifications.
7. The installation of all electric fixtures shown on plans no matter by who furnished.
8. The installation of a complete electric heating system as shown on the plans no matter by who furnished.
9. All excavation and backfill in connection with the work under this Subcontract.
10. Rochester Gas and Electric Company charges will be paid by others.

ENCLOSURE A

Page 2

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

11. Sales and compensating use taxes of the State of New York and of cities and counties of the State are exempt from this contract on all supplies and materials incorporated into the completed project.
12. Clean up as and when directed and remove own rubbish.

ENCLOSURE B

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

As part of the total price of this Subcontract, this Subcontractor has included the allowance amount and sum of Forty-Eight Thousand Dollars (\$48,000.00) for the furnishing only of the interior electric light fixtures and lamps.

The General Contractor or his designee shall have the right to enter into contracts with others for the furnishing only of the aforementioned interior electric light fixtures and lamps, and shall have the right to assign such electric light fixture contracts to this Subcontractor. In the event the aforementioned electric light fixtures are furnished by others, the fixtures will be furnished f.o.b. Subcontractor's warehouse where they will be stored, and shall remain the property of the Subcontractor, to be stored and then installed on the project when required. If the contract for the aforementioned fixtures is greater (or less) than the

allowance amount, the difference shall be credited by the Owner.

The Subcontractor shall be responsible for the removal of the fixtures previously

ENCLOSURE C

Attachment to Subcontract dated September 29, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

As part of the total price of this Subcontract, this Subcontractor has included the allowance amount and sum of Thirty-Six Thousand Dollars (\$36,000.00) for the furnishing only of the electric baseboard heaters and thermostats.

The General Contractor or his designee shall have the right to enter into contracts with others for the furnishing only of the aforementioned electric baseboard heaters and thermostats and shall have the right to assign such electric heating materials contracts to this Subcontractor. In the event the aforementioned electric baseboard heaters and thermostats are furnished by others, the materials will be furnished f.o.b. Subcontractor's warehouse where they will be unloaded, signed for and become the responsibility of the Subcontractor, to be stored and then installed on the project. It is understood that the allowance for the aforementioned materials is greater than the actual cost of the materials and the difference of this Subcontracted allowance is to be used for the installation of the electric baseboard heaters and thermostats.

been previously approved in writing by the General Contractor.

ENCLOSURE D

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

It is contemplated that the Contractor or a related entity will construct an additional project of approximately 264 dwelling units in Rockaway, New York in the vicinity of Pinnacle View Apartments Site 6. Should this be done, then the Contractor or a related entity shall have the option of extending this Subcontract for the additional project by written notification to this Subcontractor. The price of this additional work is to be based upon the price of the work under this Subcontract prorated.

ENCLOSURE E

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

The Contractor will provide to the Subcontractor material elevator hoisting service. The Subcontractor will promptly load and unload on the hoisting device all materials to be hoisted by the General Contractor. The General Contractor will perform hoisting for the Subcontractor on schedules established by the General Contractor. All hoisting will be performed during normal working hours. The care, custody, and ownership of all the Subcontractor's material being hoisted remains the responsibility of the Subcontractor. As compensation for this hoisting service, the Subcontractor will pay to the General Contractor the sum of Twenty-Thousand Dollars (\$20,000). This sum will be paid to the General Contractor when the Subcontractor's work is fifty percent (50%) complete as measured by the value of the Subcontractor's requisition.

Complaint Exhibit A

ATTORNEYS AT LAW

141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760
—
TELEPHONE (607) 754-0105
AREA CODE 607

~~Vodney A. Richards~~

RE.		
10		
10		
10		
RE.		
20		

NOTICE OF LIEN ON ACCOUNT
OF PUBLIC IMPROVEMENT

BECKER, CARD, LEVY & RICHARDS, P. C.
ATTORNEYS AT LAW
141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760
TELEPHONE (609) 753-0106

NOTICE OF LIEN ON ACCOUNT
OF PUBLIC IMPROVEMENT :

TO: COMPTROLLER, NEW YORK STATE URBAN DEVELOPMENT CORPORATION, 1345 AVENUE OF THE AMERICAS, NEW YORK N. Y., 10019, AND TREASURER, CLINTON AVENUE PAUL PLACE HOUSES, INC., 919 CLINTON AVENUE, SOUTH, ROCHESTER, NEW YORK, 14620, AND PRESIDENT, BEACON CONSTRUCTION COMPANY, INC., P. O. BOX 2051, MONTICELLO STATION, BROCKTON, MASS, 02405

NOTICE IS GIVEN that MATCO ELECTRIC COMPANY, INC., d/b/a Dwyer Electric Co., Inc., whose post office address is 55 Commerce Drive, Rochester, New York, has established a lien upon the moneys of the Beacon Construction Company, Inc., P. O. Box 2051, Monticello Station, Brockton, Massachusetts, which are being held by the New York State Urban Development Corporation, which is a corporation organized and existing under the Private Housing Finance Law of the State of New York and a subsidiary of the New York State Urban Development Corporation, which, upon completion of said project, remains in the hands of one of the officers thereof, and which are applicable to the construction of the public improvement, described below, to the extent of the amount due and to become due on a contract dated September 20, 1972, made by the Beacon Construction Company, Inc., and Matco Electric Company, Inc., d/b/a Dwyer Electric Co., Inc., for the construction of a public improvement. The lien is based upon the following facts:

1. The name of the contractor for whom the labor and materials were performed and furnished is Beacon Construction Company, Inc., P. O. Box 2051, Montello Station, Brockton, Mass., 02403.

for the interior and exterior electrical systems in an apartment building being constructed at 845 CLINTON AVENUE, SOUTH, ROCHESTER, NEW YORK, pursuant to the plans and specifications of Hoberman & Wasserman, Architects, 19 West 44th Street, New York, New York, 10036.

7. Thirty (30) days have not elapsed since the completion and acceptance of the construction of this public improvement.

1: 20, 24, 11

PAID TO THE COMPANY, INC.
1000 1000 1000 Co., Inc.

STATE OF NEW YORK)
 :SS.
COUNTY OF BROOME)

JAMES F. MATTHEWS, being duly sworn, deposes and says that deponent is the President of Matco Electric Company, Inc. herein, that deponent has read the foregoing notice of Lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

The reason why this verification is made by deponent is that since it is an affidavit to win the trust of others, deponent is not making a statement of fact, but a statement of belief. The grounds of deponent's belief is to all matters not therein stated upon information and belief, and as to those matters deponent believes it to be true.

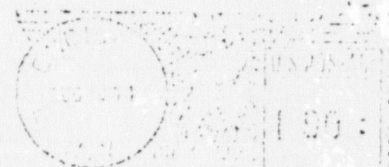
/s/ James F. Matthews
JAMES F. MATTHEWS

Sworn to before me this

28th day of August, 1974.

/s/ Rodney A. Richards
Notary Public
/s/ Notary Stamp

BECKER, CARD, LEVY & RICHARDSON
ATTORNEYS AT LAW
101 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760



REGISTERED
NO. 7042

Becker
P.O.
Monterey
Brooklyn

Auction Company, Inc.
51
Union
SS. 02403

RETURN RECEIPT
REQUESTED

RECEIVED

BECKER, CARD, LEVY & RICHARDS, P. C.

ATTORNEYS AT LAW

JACOB Y. BECKER (1929-1972)
MARLON H. CARD
BRUCE S. BECKER
PHILIP D. LEVY
RODNEY A. RICHARDS
DONALD P. CARLIN

141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760

TELEPHONE (507) 754-0105
AREA CODE 607

August 29, 1974

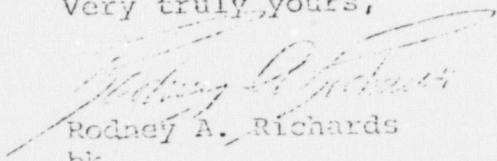
President
Beacon Construction Company, Inc.
P. O. Box 2051
Montello Station
Brockton, Mass. 02405

Re: Notice of Mechanic's Lien
Housing for the Elderly
U. D. C. Site #6
846 Clinton Avenue, South
Rochester, New York

Dear Sir:

Enclosed herewith please find a copy of a notice
of a mechanic's lien forwarded to the Monroe County
Clerk's Office for entry concerning the above-entitled
matter.

Very truly yours,


Rodney A. Richards
bk
Enclosure

1	1	1
2	1	1
3	1	1
4	1	1
5	1	1
6	1	1
7	1	1
8	1	1
9	1	1
10	1	1

XEROGRAPH d/b/a Dyer Electric Co., Inc.

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2252-2254

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

2. *Salmonella enteritidis* (SE) (1990-1991): 100% (10/10) of the isolates were sensitive to all the antibiotics tested.

whose business address is at 56 Commerce Drive

is the City of Rochester, New York

...and whose principal place of business is at

in the City of Rochester, N.Y.

have and claim a lien for the principal and interest of the price and value of the labor and material hereinafter mentioned, upon the house, building and appurtenances, and upon the lot, premises and parcel of land upon which the same may stand, or be intended to stand, hereinafter mentioned, pursuant to the Lien Law of the State of New York and all acts amending or extending the same or providing for the filing of mechanic's liens; or in force in said County in reference to mechanic's liens, and hereby states:

(1a.) The name and address of Lenor's attorney, if any Becker, Card, Levy & Richards, P.C.
141 Washington Avenue, Endicott, New York

(2.) The name of the owner of the real property against whose interest therein a lien is claimed is Clinton Avenue Paul Place Houses, Inc., 919 Clinton Avenue, South,
Rochester, New York, 14620 and the interest of the owner as far as known to the lienor is
held by warrant; deed.

Total amount unpaid \$293,001.52

The time when the last item of material was furnished was August 22 1974

44 Madison Avenue
New York, N.Y. 10017
212 677-7344

AKER, CARD, LEVY & RICHARDS, P.C.
ATTORNEYS AT LAW
141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760

SPECIAL
DELIVERY

Construction Company, Inc.
2051
Station
Mass. 02405

RETURN RECEIPT
REQUESTED

REGISTERED
12. 1057

Complaint Exhibit C

MOTION OF DEFENDANT TO DISMISS OR
FOR SECURITY FOR COSTS

The defendant moves this Court upon the grounds that more particularly appear in the affidavit of RODNEY A. RICHARDS, sworn to on the 22nd day of October, 1974, annexed hereto, as follows:

1. To dismiss the complaint because it fails to state a claim against the defendant upon which relief can be granted,

AND

2. To dismiss the complaint because it does not state a claim for which this Court has jurisdiction because it appears on the face of the complaint that the alleged claim does not arise under the Constitution, Laws, or Treaties of the United States or is alleged therein.

AND

3. To dismiss that part of the complaint seeking judgment to vacate defendant's request for a verified statement pursuant to paragraph 5 of Section 76 of the Lien Law, State of New York, on the grounds that this right cannot be waived and any effort to enforce a waiver is contrary to public policy.

AND

4. To dismiss this action on the ground that the Court lacks jurisdiction because the controversy is not between citizens of different states in that CROW OF AVE. PAUL PRICE ROOSTER, INC., is a corporation organized under the laws of the State of New York and is an independent contractor in the construction business and is not a resident of the State of New York.

OR, IN THE ALTERNATIVE

5. To award defendant's attorneys' fees and costs in the sum of Two Hundred and Fifty Dollars (\$250.00) pursuant to Rule 25 of this Court on the ground that the plaintiff has its principal place of business without the district.

BECKER, CARD, LEVY & RICHARDS, P. C.
Attorneys for Defendant
Office and Post Office Address
141 Washington Avenue
Endicott, New York 13760
TEL: (607) 754-0111

NOTICE OF MOTION

TO: HOWARD MEYER
Attorney at Law
1400 Statler Hilton Hotel
Buffalo, New York

PLEASE TAKE NOTICE that the undersigned will bring
the above motion on for a hearing before this Court at the
United States Courthouse, Buffalo, New York, on the 11th day
of November, 1974 at 10:00 o'clock in the forenoon of that day

Affidavit

STATE OF NEW YORK)
 :SS.
COUNTY OF BROOME)

ROBERT A. RICHARDS, being duly sworn, deposes and says:

1. Deponent is associated with the law firm of RICHARDS,

ing the above-entitled action.

contract with the plaintiff, a general contractor, to provide,

3A, Lien Law, State of New York. A copy of the summons and complaint is annexed to the Petition for Removal.

5. On October 3, 1974 there was served on deponent a bond issued by the Aetna Casualty & Surety Company discharging the liens in issue. A copy of this bond is annexed hereto as Exhibit "A".

6. The within action seeks to declare null and void the notice of mechanic's lien hereinbefore described. The complaint fails to identify by allegation the ownership of the property in question. This is a necessary allegation, the absence of which renders the complaint defective and subject to a motion to dismiss for failure to state a claim.

7. Further, the complaint seeks a summary discharge of the lien. The complaint does not state the facts which would entitle the plaintiff to such relief. The complaint therefore warrants a dismissal of the action.

8. The within claim does not arise under the Constitution or Laws of the United States. Rather, it seeks a judicial interpretation of the Lien Law, State of New York, a matter which should be left to judicial determination by the Supreme Court, State of New York. Further, the relief the complaint seeks is erroneous. Assuming the truth of the allegations in the complaint, the plaintiff is not entitled to a summary discharge of the lien.

Section 19 of the Lien Law, State of New York, sets forth the procedure to be followed in an application to discharge a lien for private improvement. Section 21 of the same law provides the procedure for the discharge of a public improvement lien. The within complaint does not comply in any way with the requirements of these provisions.

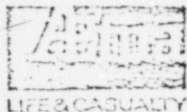
9. Plaintiff's demands for judgment seeking to vacate defendant's request for a verified statement pursuant to Section 7a, Lien Law, State of New York, as a matter of law, warrants dismissal. The right to such a statement cannot be waived; and any effort to enforce a waiver is contrary to public policy.

10. Dependant respectfully requests the Court to dismiss the within complaint.

Given to before me the

Notary Public

HAROLD W. BROWN
Notary Public, State of New York
Quadrant of New York City
Manhattan County, New York



BOND TO DISCHARGE
MECHANIC'S LIEN

THE AETNA CASUALTY AND SURETY COMPANY
Hartford, Connecticut 06115

KNOW ALL MEN BY THESE PRESENTS, that we, BEACON CONSTRUCTION CO., INC., P.O. Box 2051,
Montello Station, Brockton, Mass. 02405

as Principal, and THE AETNA CASUALTY AND SURETY COMPANY, of Hartford, Connecticut with an office and usual
place of business at No. 1200 Nible Tower Bldg., Rochester, New York

as Surety, are held and firmly bound unto the Clerk of the County of Monroe in the sum of
Three Hundred Fifty-one Thousand Six Hundred One & 82/100 (\$ 351,601.82) Dollars, lawful
money of the United States, for which payment well and truly to be made we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED and SEALED this 30th day of September, 1974.

WHEREAS, on the 23rd day of August, 1974, MATCO ELECTRIC COMPANY, INC. c/o/a

DAYTE ELECTRIC CO. INC., 56 Commerce Drive, Rochester, New York
caused to be filed in the office of the Clerk of the County of Monroe a notice of Mechanic's Lien
or Claim in the sum of Two Hundred Ninety-three Thousand One & 52/100 (\$ 293,501.52) Dollars, against
Real Property situate at 846 Clinton Avenue, South, Rochester, New York

WHEREAS, said BEACON CONSTRUCTION CO., INC.

desire to

discharge said lien or claim pursuant to the Lien Law of the State of New York, and

that we, the undersigned, do hereby certify that the sum of Three Hundred Fifty-one Thousand Six Hundred One & 82/100 Dollars (\$ 351,601.82) has been paid to the Clerk of the County of Monroe, New York, for the purpose of discharging said lien or claim.

and that we, the undersigned, do hereby certify that we will and truly pay any judgment which may be rendered against the property for
the enforcement of said lien, not exceeding the sum of Three Hundred Fifty-one Thousand Six Hundred One & 82/100 Dollars (\$ 351,601.82) Dollars, against the property.

THE AETNA CASUALTY AND SURETY COMPANY

By W.A. Hichener
W.A. Hichener, Attorney-in-Fact

State of Massachusetts
County of Suffolk } ss.

On this 30th day of September, 1974, before me personally appeared Harvey Steinberg

EXHIBIT "A" - p.1

George Rosenblatt

County of

On this day of

19

before me personally came

to me known, who, being by me duly sworn, did depose and say: That he resides in the City of
; that he is Attorney-in-Fact of THE AETNA CASUALTY AND SURETY COMPANY,
the corporation described in and which executed the within instrument; that he knows the corporate seal of said
Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by him and that he
signed said instrument as Attorney-in-Fact by authority of the Board of Directors of said Company; and affiant did
further depose and say that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882
of the Laws of the State of New York for the year 1939, constituting Chapter 28 of the Consolidated Laws of the
State of New York known as the Insurance Law as amended, issued to THE AETNA CASUALTY AND SURETY
COMPANY his certificate that said Company is qualified to become and be accepted as surety or guarantor on all
bonds, undertakings, recognizances, guaranties, and other obligations required or permitted by law; and that such
certificate has not been revoked.

Notary Public

The within instrument has been executed by the above named officer by authority of the Board of Directors per-
suant to the following Standing Resolutions of the aforesaid THE AETNA CASUALTY AND SURETY COMPANY,
which Resolutions are now in full force and effect.

VOTED: That each of the following officers, Chairman, Vice Chairman, President, Any Executive Vice President, Any Senior Vice President, Any Vice
President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, may from time to time appoint Resident Vice Presidents, Resident Assistant
Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may
provide to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature
of a bond, recognition, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the
power and authority given him.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognition, or conditional undertaking shall be valid and
binding on the Company when designed by the Chairman, the Vice Chairman, the President, an Executive Vice President, a Senior Vice President, a Vice President,
an Assistant Vice President or by a Resident Vice President, pursuant to the power prescribed in the certificate of authority of such Resident Vice President, and duly
signed and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the cer-
tificate of authority of such Resident Assistant Secretary, or (3) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power
prescribed in his or their certificate or certificates of authority.

Witness my hand and seal of office

County of

Notary Public for the State of New York, do hereby certify that the foregoing is a true and correct copy of the original as the same appears from the records of my office.

Witness my hand and seal of office this day of 19

(Attorney-in-Fact)

BOND TO DISCHARGE
MECHANIC'S LIEN

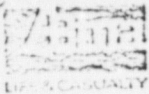
EXHIBIT "A" - p.2

-15-

I approve of the within bond as to its form and
sufficiency of the Surety.

Dated

THE AETNA CASUALTY AND SURETY COMPANY
Hartford, Connecticut 06115



ATTORNEY-IN-FACT JUSTIFICATION
PRINCIPAL'S ACKNOWLEDGMENT-IF A CORPORATION

State of New York, County of _____

On this _____ day of _____, 19____, before me personally appeared _____, to me known, who, being by me duly sworn, deposes and says: That he resides in the City of _____ of _____ the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereon to by like order.

PRINCIPAL'S ACKNOWLEDGMENT-IF INDIVIDUAL OR FIRM

State of New York, County of _____

On this _____ day of _____, 19____, before me personally appeared _____, to me known to be (the individual) (one of the firm) of _____, who executed the within instrument, and he thereupon duly acknowledged to me that he executed the same (as the out and deed of said firm).

SURETY COMPANY'S ACCOUNTS

State of New York, County of _____

On this 30th day of September, 19____, before me personally appeared W.A. Richerson, to me known, who, being by me duly sworn, deposes and says: That he resides in the Town of Penfield, N.Y. _____, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereon to by like order. I, the undersigned, being a Justice of the Peace of the County of _____, State of New York, do hereby certify that the foregoing is a true and correct copy of the within instrument, as the same appears from the records of my office.

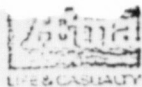
CAPITAL STOCK \$25,000,000

Assets		Liabilities	
Capital Stock	25,000,000	Surplus to policyholders	336,375,844
Reserve for unearned premium	1,611,773,053	Other surplus	152,752,524
Reserve for claims	1,611,773,053	Capital Stock	25,000,000
Reserve for taxes	1,611,773,053	Reserve for unearned premium	1,611,773,053
Reserve for interest	1,611,773,053	Reserve for claims	1,611,773,053
Reserve for other	1,611,773,053	Reserve for taxes	1,611,773,053
Total Assets	\$ 1,973,153,837	Total Liabilities	\$ 1,973,153,837

Surplus to policyholders at \$ 33,200,655

in above statement are deposited with public collection, as required by law.

EXHIBIT "A" - p. 3



POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, THAT THE AETNA CASUALTY AND SURETY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint **R. B. Longha, W. A. Richner, D. J. Robinson, M. B. Rootman or R. E. Pool** - -

of **Rochester, New York**

its true and lawful Attorney-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or if the following line be filled in, within the area there designated, the following instrument(s):

by his sole signature and act any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any and all contracts incident thereto

and to bind THE AETNA CASUALTY AND SURETY COMPANY, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of THE AETNA CASUALTY AND SURETY COMPANY, and in the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Company which Resolutions are now in full force and effect:

Resolved: That each of the following officers, Chairman, Vice Chairman, President, Any Executive Vice President, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, may from time to time appoint Resident Vice Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

VERIFIED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the Chairman, the Vice Chairman, the President, an Executive Vice President, a Senior Vice President, a Vice President, an Assistant Vice President or by a Resident Vice President, pursuant to the power prescribed in the certificate of authority of such Resident Vice President, and duly attested with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by the said Attorney-in-Fact and by authority of the following Standing Resolutions voted by the Board of Directors of THE AETNA CASUALTY AND SURETY COMPANY, which Resolutions are now in full force and effect:

Resolved: That the signature of each of the following officers, Chairman, Vice Chairman, President, Any Executive Vice President, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, and the seal of the Company may be affixed by force to any power of attorney, certificate of authority, or other writing obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

Witness my hand and the seal of the Aetna Casualty and Surety Company, at Hartford, Connecticut, this 10th day of December, 1931.

State of Connecticut

County of Hartford

City of Hartford

R. B. Longha, W. A. Richner, D. J. Robinson, M. B. Rootman or R. E. Pool

do hereby certify that the foregoing is a true and correct copy of the original as the same appears from the records of the Company.

THE AETNA CASUALTY AND SURETY COMPANY, the corporation described in and which executed the foregoing instrument, that he knows the seal of said corporation, that the seal affixed to the said instrument is a corporate seal, and that he executed the said instrument on behalf of the corporation by authority of this office under the Standing Resolutions thereof.

THE AETNA CASUALTY AND SURETY COMPANY

By

B. I. Harding

B. I. Harding, Secretary



Mary J. Kingston
My commission expires 12-31-35
Mary J. Kingston, Secretary

CERTIFICATE

I, the undersigned, **Assistant Secretary**

of the AETNA CASUALTY AND SURETY COMPANY, a stock corporation of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked, and furthermore, that the Standing Resolutions of the Board of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut, Dated this **30th**

September 1931

EXHIBIT "A" - p.4

Thos. Richner, Assistant Secretary